

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE STEWART,

Defendant-Appellant.

UNPUBLISHED

September 30, 2014

No. 316315

Wayne Circuit Court

LC No. 12-010370-FC

Before: METER, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his convictions by a jury of armed robbery, MCL 750.529; carjacking, MCL 750.529a(1); unlawful driving away of an automobile (UDAA), MCL 750.413; and possession of firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced him, as a second-offense habitual offender, MCL 769.10, to 12 to 20 years in prison for the armed-robbery and carjacking convictions, 2 to 7 ½ years in prison for the UDAA conviction, and two years in prison for the felony-firearm conviction. We affirm.

During the early morning hours of August 13, 2012, Taleb Mohamed (complainant) was returning home from Ramadan observances when, as he stopped in front of his home in Hamtramck, a car pulled up behind him. A man came at him with a “big gun” in his hand. Complainant thought the gunman was going to kill him. The gunman knocked on the car window with the gun barrel and said, “get the f--- out of the car.” The gunman stole complainant’s car and personal property in it.

Defendant argues that he is entitled to a new trial because, besides complainant’s allegedly unreliable identification of defendant as the perpetrator, there was no other evidence presented by the prosecution that supported the jury’s verdict, and there was insufficient evidence to prove defendant was the perpetrator. We disagree.

“In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (internal citation and quotation marks omitted). “All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury’s determinations regarding the weight of the evidence and the credibility of the witnesses.” *People v Unger*, 278 Mich App 210, 222;

749 NW2d 272 (2008). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Indeed, in approaching a sufficiency challenge, the Court will “draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Identity is always an essential element in a criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). The credibility of identification testimony is for the trier of fact to resolve and this Court will not substitute its judgment for the judgment of the trier of fact. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Positive identification by witnesses may be sufficient to support a conviction of a crime. *Id.* In addition, [c]ircumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Defendant argues only that there was insufficient evidence presented on the “identity” element of the four crimes of which he was convicted. However, complainant’s identification testimony at trial was reasonable and credible in that he identified defendant as his assailant, testified that he could “see [defendant’s] whole face and everything” on the night of the incident, and described the lighting conditions in front of the house where the crime occurred as “[v]ery bright,” stating that “you can see everything clearly.” Later, during cross-examination by defendant’s trial counsel, complainant unequivocally reiterated his identification of defendant, stating, “I can’t forget his face ever. When you got a gun to your head and your life flashes in your head there are certain things you can never forget.” Complainant also testified at trial that, a month after the crime, he reviewed an array of photographs and identified defendant as the gunman who stole his car. Hamtramck Police Department Investigator Gregory Collins corroborated complainant’s testimony regarding complainant’s reaction to the photo array when Collins testified that complainant “[i]mmediately” identified defendant and quoted him as saying, “that’s the guy that robbed me . . . at gunpoint.” Finally, complainant testified at trial that he identified defendant as the gunman at the preliminary examination on November 1, 2012.

The identification of defendant by complainant as the person responsible for the armed robbery, carjacking, UDAA, and felony-firearm was sufficient to support defendant’s convictions of the charged offenses. *Davis*, 241 Mich App at 700. The jury heard complainant’s testimony, assessed his credibility, and, as evidenced by its guilty verdicts, chose to believe him. The credibility of complainant’s identification testimony was properly resolved by the jury, and this Court will not substitute its judgment for the judgment of the trier of fact. *Id.*

The testimony of Brandi Turner, defendant’s girlfriend, was perhaps intended to provide an alibi for defendant, but she conceded to the prosecutor on cross-examination that, because she was asleep between 3:00 a.m. and 3:45 a.m. the morning of August 13, 2012—the time the crimes occurred—she could not say with certainty that defendant was with her in the apartment then. At any rate, any conflict in the testimony between complainant and Turner must, under the authority of *Unger*, 278 Mich App at 222, be resolved in favor of the prosecution.

In addition to the direct evidence provided by complainant’s testimony, there was also circumstantial evidence to support defendant’s responsibility for the crimes and the jury’s

resulting guilty verdicts. Defendant told Michigan State Police Trooper Charles Rozum that he saw the Monte Carlo in Detroit two or three days before, kept an eye on it, and decided to take it so he could sell it for \$2,000. Defendant also admitted to Hamtramck Police Department Investigator Gregory Collins that he “stole the car from Conant and Davison” While not a full confession in that the offered details differed in certain respects from the actual crimes, these admissions nonetheless were circumstantial evidence of defendant’s complicity in the crimes charged. In addition, when defendant was arrested, complainant’s driver’s license and “CPL permit” were found on defendant. Defendant fled from the police twice during an attempted traffic stop and was later found hiding in the closet of a nearby apartment. Evidence of a defendant’s flight is admissible to support an inference of a consciousness of guilt. *Unger*, 278 Mich App at 226.

An assessment of the evidence in the light most favorable to the prosecutor shows that a rational trier of fact could find the defendant guilty beyond a reasonable doubt, and thus the prosecutor presented sufficient evidence to sustain defendant’s convictions. *Tennyson*, 487 Mich at 735.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly